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EXAMINER

VANIK, DAVID L

ART UNIT PAPER NUMBER

1615

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/661,020

Applicant(s)

LEVY ET AL.

Examiner

David L. Vanik

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2005.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
4a) Of the above claim(s) 1-47, 56 and 57 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 48-55 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☒ Claim(s) 1-57 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/29/2005; 3/10/2005
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

DETAILED ACTION

Receipt is acknowledged of the applicant's Response to Election/Restriction filed on 4/19/2005.

Election/Restrictions

Applicant's election with traverse of Claims 52-55 in the reply filed on 4/19/2005 is acknowledged. The traversal is on the ground(s) that Groups I-IV are sufficiently related and, as such, should be examined together. This is not found persuasive for two main reasons. First of all, Groups I-IV can be classified in distinct areas and differ in scope as indicated by their distinct classification. Secondly, the compositions relating to the withdrawn Claims 1 and 25 are not sufficiently related to the absorbent article of the independent Claims 48, 52 and 54 to warrant rejoinder. After considering Applicant's arguments, the examiner acknowledges that the claims of Group II are product-by-process claims and, as such, should be combined with Group I for future examination. However, for the reasons stated above, Group I is an independent invention from the absorbent articles of Groups III-IV.

The examiner agrees with Applicant's assertion that Groups III and IV should be examined together. As such, Group III, comprising Claims 48-51 will be examined together with Group IV. In sum, Claims 48-55 will be examined in the instant application. Claims 1-47 and 56-57 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species and invention, there being

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no allowable generic or linking claim. Claims 56-57 are withdrawn from further consideration as reciting the limitations of a non-elected group. The examiner requests that the limitations of Claims 56-57 be inserted into the elected Claims 48-55 for examination purposes. Applicant timely traversed the restriction (election) requirement in the reply filed on 12/29/04. The requirement is still deemed proper and is therefore made FINAL.

Claim Objections

Claims 48-57 are objected to because of the following informalities: Claims 56-57, reciting the limitations of Claims 1 and 25, are drawn to a non-elected Group. Elected Claims 52-55 and restriction withdrawn Claims 48-51 are directed to a non-elected Group and, as such, are objected to. The examiner requests that the limitations of Claims 56-57 be inserted into the elected Claims 48-55 for examination purposes. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless,—

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 50-51 and 54-55 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent 4,842,593 ('593).

'593 disclose absorbent articles comprising a buffering system and a microbial agent (abstract). According to '593, the absorbent article can comprise a backsheet, an intermediate absorbent core layer, and a topsheet (column 3, lines 5-14). The topsheet layer can comprise an anionic surface (column 4, lines 26-34 and column 13, lines 31-45). A specific type of anionic surface used by '593 is rayon (column 4, lines 26-34 and column 13, lines 31-45). Like the instant application, biguanides can be used to coat the topsheet surface of diapers (column 11, lines 1-48; column 13, lines 31-45; and Claim 8). The biguanides, as a member of the pH system, can be incorporated on or in the topsheet or flexible substrate (column 13, lines 31-45). Since the pH system can be incorporated on or in topsheet or flexible substrate by a gel-type coating, absent a showing to the contrary, it is the examiner's position that the biguanides are non-covalently associated with the anionic surface (column 5, lines 48-60; column 10, line 57 – column 12, line 65; and Claim 8).

It is the examiner's position that, inherently, biguanide is noncovalently bonded to an anionic surface in the composition advanced by '593. Since the essential elements of the '593 composition are identical to the instant compositions (that is, an anionic surface, rayon, with a biguanide-based antimicrobial agent incorporated on or in said surface), the composition would inherently have the same physiochemical properties as the compositions set forth in the instant application. As such, it is the examiner's position that the composition advanced by '593 anticipates the compositions enumerated in the instant claim set.

The claims are therefore anticipated by US patent 4,842,593 ('593).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 48-49 and 52-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over US patent 4,842,593 ('593) in view of 3,683,916 ('916).

The teachings of '593 are discussed above. '593 does not teach a composition comprising an anionic surfactant attached to the topsheet of an absorbent article such as a diaper.

'916 teach a disposable multi-layered diaper of high absorptive capacity (abstract). According to '916, it is advantageous to treat a "facing layer" or topsheet

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layer with a wetting agent (column 5, line 58 – column 6, line 6). Wetting agents, such as anionic surfactants, can be used to treat a “facing layer” or topsheet layer by modulating the amount of urine capable of penetrating into the diaper topsheet (column 5, line 58 – column 6, line 6). Because an anionic surfactant can advantageously modulate the amount of urine penetration on the topsheet or “facing layer” of a diaper, one of ordinary skill in the art would have been motivated to add an anionic surfactant to the topsheet layer of the composition proposed by ‘593. Based on the teachings of ‘916, there is a reasonable expectation that anionic surfactants, when added to the topsheet layer of a diaper, can effectively modulate urine penetration. As such, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate an anionic surfactant in the invention advanced by ‘593 in view of the teachings of ‘916.

It should be noted that other references, such as US2003/0235550 (paragraph 0046) and US 5,993,840 (column 5, lines 1-65), provide motivation to add anionic surfactants to a diaper or absorbent article.

Correspondence


Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Vanik whose telephone number is (571) 272-3104. The examiner can normally be reached on Monday-Friday 8:30 AM - 5:00 PM.

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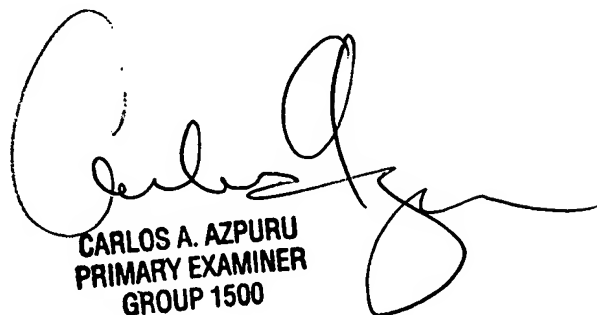
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carlos Azpuru, can be reached at (571) 272-0588. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David Vanik
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9/12/08



CARLOS A. AZPURU
PRIMARY EXAMINER
GROUP 1500